

Reportable:	NO
Circulate to Judges:	NO
Circulate to Magistrates:	NO
Circulate to Regional Magistrates	NO



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

CASE NUMBER: 2014/40666

In the matter between:-

SEBELO PATRICK MOJOLA

Plaintiff

and

THE MINISTER OF POLICE

Defendant

*This judgment is handed down by electronic communication (e-mail) to the parties' legal representatives as indicated in the practice note. The date that the judgment is deemed to be handed down is **15 September 2025***

JUDGMENT

REID J

- [1] This is a claim for damages resulting from an unlawful arrest and detention on 30 July 2014 on a charge of public drinking, under South African Police Service SAPS CAS 856/07/2014 at Orange Farm. The plaintiff was arrested without a warrant at approximately 21h00.

- [2] The plaintiff was detained at the Orange Farm Police Station under Orange Farm SAP 14 cell register 548/2014 until 31 July 2014 at 12h00. The plaintiff thus remained detained for a period of 15 hours.

- [3] The defendant conceded that the plaintiff was arrested and detained unlawfully.

- [4] The issue to be determined by this Court is the *quantum* of the damages suffered by the plaintiff.

- [5] The plaintiff claims an amount of R400,000.00 for compensation of delictual damages suffered as a result of

the arrest and detention.

Evidence

[6] The plaintiff was the only witness that testified. He stated that he was traumatised and experienced an infringement to human dignity, movement and conditions consistent to dignity. He also testified that he experienced an infringement of his physical and personal rights, as well as an infringement of his security of person.

[7] When the plaintiff was arrested, he was handcuffed with another person and placed in the back of a police vehicle ("van"). He was arrested in public and since the arrest the community perceived him as a criminal. After he was released, he spent days hiding from the public.

[8] The plaintiff stated that he was placed in an overcrowded police cell in detention. He felt threatened as the other prisoners asked him if he has money. He could not sleep and had to sit down on the cold concrete. He ended up standing for the majority of the evening and the following

day. The toilet was unhygienic and dirty. Grey blankets were supplied, but it was filthy. It also appeared that feces were rubbed against the wall of the prison cell. The cell had a terrible smell.

Damages

[9] It is trite law that each case must be judged on its own merits. The facts of every matter are to be considered in determination of a fair *quantum*. In **Motladile v Minister of Police** 2023 JDR 2055 (SCA), any application of a generalised amount per day was warned against. It was held that:

*“[12] The amount of damages to be awarded to a plaintiff in a deprivation of liberty case, as we have here, is in the discretion of the trial court. That discretion must naturally be exercised judicially. The approach of an appellate court to the question of whether it can substitute a trial court’s award of damages is aptly summarised by the Constitutional Court in **Dikoko v Mokhatla** 2006 (6) SA 235 (CC) as follows:*

‘ . . . [S]hould an appellate Court find that the trial court had misdirected itself with regard to material facts or in its approach to the assessment, or having considered all the facts and circumstances of the case, the trial court’s assessment of damages is markedly different to that of the appellate court, it not only has the discretion but is obliged to substitute its own assessment for that of the trial court. In its determination, the Court considers whether the amount of damages which the trial Court had awarded was so palpably inadequate as to be out of proportion to the injury inflicted.’

- [10] The difficulty for the courts in determining the most appropriate amount to be awarded for damages, have been discussed in **South African Journal of Criminal Justice / Chronological / 2020 / Part 2 / Quantification of damages for unlawful arrest and detention: South Africa, Namibia and Eswatini/Swaziland (1) ((2020) 33 SACJ 320)** by Chuks Okpaluba and aptly described as follows:

*“In **Ferdinand v Minister of Police** 628/2014) [2018] ZALMPPHC 58 (7 March 2018) at paras [19]–[21]. Makgoba JP of the Limpopo Division, having distilled from existing case law and set out by Visser and Potgieter in their **Law of Damages**, had stated some guidelines for quantification as follows:*

“In deprivation of liberty the amount of damages is in the discretion of the court. Factors which play a role are the circumstances under which the deprivation of liberty took place; the presence or absence of improper motive or malice on the part of the defendant; the harsh conduct of the defendants; the duration and nature of the deprivation of liberty; the status; standing; age; health and disability of the plaintiff; the extent of the publicity given to deprivation of the liberty; the presence or absence of an apology or satisfactory explanation of the events by the defendant; and awards in previous comparable cases.”

[11] In **Mbata v Minister of Police** 2023 JDR 3015 (NWM) a full bench decision, penned by Petersen J, found as follows:

“[11] A court in exercising its discretion must balance the premium placed on the right of liberty and human dignity, whilst avoiding extravagance in compensating for loss of liberty. The peculiar facts of each matter should prevail as a general rule with comparative analysis being secondary thereto.

*The primary purpose of awarding damages (solatium) in unlawful arrest and detention claims is succinctly captured by Bosielo AJA (as he then was) in **Minister of Safety and Security v Tyulu** 2009 (5) SA 85 (SCA) at paragraphs [26] and [27], where he said:*

“[26] In the assessment of damages for unlawful arrest and detention, it is important to bear in mind that the primary purpose is not to enrich the aggrieved party but to offer him or her some much-needed solatium for his or her injured feelings. It is therefore crucial that serious attempts be made to ensure that the damages awarded are commensurate with the injury inflicted. However our courts should be astute to ensure that the awards they make for such infractions reflect the importance of the right to personal liberty and the seriousness with which any arbitrary deprivation of personal liberty is viewed in our law. I readily concede that it is impossible to determine an award of damages for this kind of injuria with any kind of mathematical accuracy. Although it is always helpful to have regard to awards made in previous cases to serve as a guide, such an approach if slavishly followed can prove to be treacherous. The correct approach is to have regard to all the facts of the particular case and to determine the quantum of damages on such facts (Minister of Safety and Security v Seymour 2006 (6) SA 320 (SCA) 325 para 17; Rudolph & others v Minister of Safety and Security & others (380/2008) [2009] ZASCA 39 (31 March 2009) (paras 26-29).

[27] Having given careful consideration to all relevant facts, including the age of the respondent, the circumstances of his arrest, its nature and short duration, his social and professional standing, the fact that he was arrested for an improper motive and awards made in comparable cases, I am of the view that a fair and appropriate award of damages for the respondent’s unlawful arrest and detention is an amount of R15 000.”

[12] It is inevitable that reliance is placed on awards in previously decided cases. This was the approach adopted by

the appellant's counsel before the Magistrate and remains the approach on appeal. The guiding of words of Nugent JA in **Seymour** supra with emphasis on **Protea Assurance Co Ltd v Lamb** 1971 (1) SA 530 (A), regarding reliance on previously decided cases remains trite:

"[17] The assessment of awards of general damages with reference to awards made in previous cases is fraught with difficulty. The facts of a particular case need to be looked at as a whole and few cases are directly comparable. They are a useful guide to what other courts have considered to be appropriate but they have no higher value than that. As pointed out by Potgieter JA in Protea Assurance, after citing earlier decisions of this Court:

'The above quoted passages from decisions of this Court indicate that, to the limited extent and subject to the qualifications therein set forth, the trial Court or the Court of Appeal, as the case may be, may pay regard to comparable cases. **It should be emphasised, however, that this process of comparison does not take the form of a meticulous examination of awards made in other cases in order to fix the amount of compensation; nor should the process be allowed so to dominate the enquiry as to become a fetter upon the Court's general discretion in such matters.** Comparable cases, when available, should rather be used to afford some guidance, in a general way, towards assisting the Court in arriving at an award which is not substantially out of general accord with previous awards in broadly similar cases, regard being had to all the factors which are considered to be relevant in the assessment of general damages. At the same time it may be

permissible, in an appropriate case, to test any assessment arrived at upon this basis by reference to the general pattern of previous awards in cases where the injuries and their sequelae may have been either more serious or less than those in the case under consideration.'

*...
[20] Money can never be more than a crude solatium for the deprivation of what, in truth, can never be restored and there is no empirical measure for the loss. The awards I have referred to reflect no discernible pattern other than that our courts are not extravagant in compensating the loss. It needs also to be kept in mind when making such awards that there are many legitimate calls upon the public purse to ensure that other rights that are no less important also receive protection.*"

[13] The Supreme Court of Appeal has recently expressed itself very strongly in respect of the comparative award approach in the assessment of quantum of damages in unlawful arrest and detention matters. In **Diljan v Minister of Police** (746/2021) [2022] ZASCA 103 (24 June 2022), Makaula AJA, writing for the Court was very emphatic in respect of exorbitant amounts claimed by litigants in comparable cases, when he said:

"[14] . . . What remains to be decided therefore is the quantum thereof. On this score, Counsel for the appellant, inter alia, urged this Court to have regard to past awards in assessing the appropriate amount to be awarded. Counsel referred us to several previous judgments, including the judgment of Lopes J in Khedama v The Minister of Police. The plaintiff in that matter had issued summons for unlawful arrest and

detention against the defendant, claiming an amount of R1 million. She was arrested and detained for a period of 9 days from 3 December 2011 and released on 12 December 2011.

[15] In Khedama, the court, in large measure, had regard to the appalling conditions in the country's detention facilities, such as lack of water, blocked toilets, dirty and smelling blankets, sleeping on the cement floor, bad quality of food, and lack of sleep. Having considered various heads of damages, Lopes J awarded damages for wrongful arrest and detention of R100 000, deprivation of liberty and loss of amenities of life of R960 000 (R80 000.00 per day for 12 days); defamation of character including embarrassment and humiliation of R500 000 and general damages in an amount of R200 000. In total, he assessed the total damages suffered at R1, 760 000. However, because the amount claimed was limited to R1 000 000 he was awarded the latter amount.

. . .

[18] The acceptable method of assessing damages includes the evaluation of the plaintiff's personal circumstances; the manner of the arrest; the duration of the detention; the degree of humiliation which encompasses the aggrieved party's reputation and standing in the community; deprivation of liberty; and other relevant factors peculiar to the case under consideration.

. . .

[20] A word has to be said about the progressively exorbitant amounts that are claimed by litigants lately in comparable cases and sometimes awarded lavishly by our courts. Legal practitioners should exercise caution not to lend credence to the incredible practice of claiming unsubstantiated and

excessive amounts in the particulars of claim. Amounts in monetary claims in the particulars of claim should not be ‘thumb-sucked’ without due regard to the facts and circumstances of a particular case.

Practitioners ought to know the reasonable measure of previous awards, which serve as a barometer in quantifying their clients’ claims even at the stage of the issue of summons. They are aware, or ought to be, of what can reasonably be claimed based on the principles enunciated above.

[21] The facts relating to the damages sustained by the plaintiff in Khedama are largely similar to those in this matter. However, the excessive amount awarded in Khedama cannot serve as a guide in a matter like the present. Even the length of the period during which Ms Khedama was incarcerated, was overstated and, as a result, she was awarded an amount which was, in my view, significantly more than what she deserved.

(emphasis by Petersen J)

[14] A court in exercising its discretion must balance the premium placed on the right of liberty and human dignity, whilst avoiding extravagance in compensating for loss of liberty. The peculiar facts of each matter should prevail as a general rule with comparative analysis being secondary thereto.”

- [12] The following factors are considered in determination of a reasonable and fair amount of compensation to the plaintiff *in casu*:

- 12.1. The plaintiff was detained for a period of 15 hours.
- 12.2. The arrest took place in view of member of the public.
- 12.3. After the arrest, the plaintiff isolated himself as he perceived the community members viewed him as a criminal.
- 12.4. The conditions in the police cell were untenable.
- 12.5. The plaintiff perceived his safety to be at risk in the police cells.

[13] It is submitted on behalf of the plaintiff that an amount of R140,000.00 would be sufficient compensation for the damages suffered by the plaintiff.

[14] It is submitted on behalf of the defendant that a fair and appropriate award would be R35,000.00 to R45,000.00.

Comparable awards

[15] A sensible starting point of the determination of *quantum*, is the dictum of Nugent JA in **Minister of Safety and Security v Seymour** 2006 (6) SA 320 (SCA) where he said at para 20:

'Money can never be more than a crude solatium for the deprivation of what, in truth, can never be restored and there is no empirical measure for the loss. The awards I have referred to reflect no discernible pattern other than that our courts are not extravagant in compensating the loss. It needs also to be kept in mind when making such awards that there are many legitimate calls upon the public purse to ensure that other rights that are no less important also receive protection'.

[16] In **Abrahams v Minister of Police** 2018 (7K6) QOD 456 (ECG) the plaintiff was detained under similar circumstances than the plaintiff *in casu*. The cell was overcrowded and dirty and he had no access to his family. He was in custody for approximately 24 hours and awarded R120,000.00.

[17] In **Minister of Police v Murray/Murray v Minister of Police**, VII, K6-237; 2016 (7K6) QOD 237 (WCC) the plaintiff was

detained for 67 hours and was awarded R15,000.00 for the unlawful arrest and detention.

- [18] In **Shongwane v Minister of Police**, VIII, K6-423; 2024 (8K6) QOD 423 (NMW) the plaintiff was awarded an amount of R21,000.00. The plaintiff was bullied by older cell mates in the filthy police cell which left him traumatised and caused anguish. The plaintiff was released after 14 hours' detention. He discontinued his studies after the incident as he lost interest in various things and opted to isolate himself. He continued to receive psychological assistance.

- [19] In **Cilliers and others v Minister of Safety and Security**, VIII, K6-369; 2024 (8K6) QOD 369 (GSJ) [unlawful deprivation of freedom for one day] and was awarded R103,000.00 per plaintiff. The first and second plaintiffs were not allowed to take their prescribed medication. He suffers from hypertension and she is diabetic. All three plaintiffs described the humiliating and degrading treatment received as traumatic, impacting on their psychological

wellbeing and dignity. The charges were eventually withdrawn against the plaintiffs.

Analysis

[20] Taking into consideration all the abovementioned factors, I hold the view that an amount of R40,000.00 (Forty Thousand Rand) would be a fair and reasonable amount of compensation to the plaintiff.

[21] In my view, an amount of R40,000.00 would achieve the purpose of “*balance(ing) the premium placed on the right of liberty and human dignity, whilst avoiding extravagance in compensating for loss of liberty*” as found by Petersen J in the abovementioned **Mbata matter**.

[22] The plaintiff should therefore be awarded an amount of R40,000.00 to be paid by the defendant, as compensation for the unlawful arrest and detention.

Costs

[23] The general principle is that the successful party is entitled to

its costs.

[24] I find no reason to deviate from the general principle.

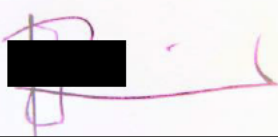
[25] The defendant should be ordered to pay the cost of the plaintiff.

[26] The emotional torment of the plaintiff cannot be underestimated.

Order

In the premise, I make the following order:

- i) The defendant is ordered to pay to the plaintiff the amount of R40,000.00 (Forty Thousand Rand) in compensation for the unlawful arrest and detention on 30 July 2014.
- ii) The defendant is ordered to pay the costs of the plaintiff on a party and party scale.



FMM REID
JUDGE OF THE HIGH COURT
GAUGENG LOCAL DIVISION JOHANNESBURG

DATE RESERVED: 27 MAY 2025
DATE HANDED DOWN: 15 SEPTEMBER 2025

APPEARANCES:

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